Pre-Sale Charitable Planning for Dallas-Fort Worth Business Owners

Why the charitable planning window closes long before the sale does.

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A Fort Worth business owner sits in her attorney's office on a Tuesday afternoon, signing a non-binding letter of intent for the sale of a company she has spent twenty-two years building. The buyer wants to close by December. The next day, in what she assumes will be a routine planning conversation, her investment advisor asks whether she has thought about charitable planning. She has always intended to fund a family foundation from the proceeds. Then her advisor asks a harder question. Has she done the gift yet?

The answer to that question, at that exact moment, may already be too late.

For DFW business owners approaching a liquidity event, pre-sale charitable planning is among the most valuable strategies available, and among the most time-sensitive. The window for gifting private company stock to charity does not close when the deal closes. It closes much earlier, defined by a legal principle called the anticipatory assignment-of-income doctrine.

Why Timing Determines Everything: The Assignment-of-Income Doctrine

The IRS applies a simple principle: whoever earns income pays tax on it. Once a business sale becomes sufficiently certain to close, the tax on the resulting gain is fixed to the owner. Transferring the stock to charity after that point does not shift the tax. To avoid this outcome, the donor must bear at least some genuine risk at the time of the gift that the sale will not close (Brach Eichler). Our companion article on [Financial Planning After Selling a Business] covers what happens after the wire hits. This article covers what must happen before it.

The "Practically Certain" Threshold

Three Tax Court decisions define the boundary. Palmer v. Commissioner (1974) held that a donor who gifted stock to a controlled private foundation before a corporate redemption was not taxed on the redemption, because the foundation had not been legally bound to surrender the shares. The IRS acquiesced. Ferguson v. Commissioner (9th Cir. 1999) tightened the analysis: by the time the Fergusons made their gift, the pending tender offer was "practically certain to occur," and the court taxed the gain to the donors anyway. Rauenhorst v. Commissioner (2002) and the recent Hoensheid v. Commissioner (T.C. Memo. 2023-34) reaffirm that donee control is only one factor. Practical certainty of the sale is the analysis courts actually apply.

The IRS Safe Harbor: Rev. Rul. 78-197

Rev. Rul. 78-197 establishes the operative safe harbor. Under the ruling, the IRS treats sale proceeds as income to the donor only if the donee is legally bound to surrender the shares at the time of the gift. The safe harbor is necessary but not always sufficient. A gift can satisfy the ruling on paper and still fail the Ferguson practical-certainty test on the facts.

Where the Line Falls: LOI, Binding Agreement, and the Danger Zone Between

In most fact patterns, a charitable gift of stock must be completed before a binding purchase agreement is signed. A non-binding LOI is not automatically fatal, but it marks the beginning of the danger zone. The right question is not whether an LOI has been signed. The right question is whether the sale has become practically certain.

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That certainty can be established well before any binding document exists, through completed due diligence, board resolutions, buyer financing commitments, or public announcements. As one national DAF sponsor puts it, once a deal is in motion, the window to gift business interests effectively closes (REN commentary). Our approach is to work backward from these certainty markers, not forward from the LOI date.

The Tax Math: Why Pre-Sale Gifting Works for $5–30M DFW Owners

When appreciated stock is sold, the seller pays capital gains tax on the appreciation. When appreciated stock is gifted to a qualified charity before the sale becomes practically certain, that tax disappears. The charity, as a tax-exempt entity, can generally sell the stock without recognizing the gain, and the donor claims a charitable deduction based on fair market value. For owners in the $5–30 million range, this is often the difference between paying seven figures of federal tax and paying nothing on the gifted portion.

The 2026 Capital Gains Landscape and Texas's Structural Advantage

Long-term capital gains for 2026 are taxed at 0%, 15%, or 20% depending on income (IRS Rev. Proc. 2025-32). The 20% bracket begins at $545,501 for single filers and $613,701 for joint filers. The 3.8% Net Investment Income Tax applies above $200,000 (single) or $250,000 (joint) of modified AGI, producing an effective federal ceiling of 23.8%. Texas has no personal income tax, so no state-level capital gains layer sits on top of that federal ceiling. A California or New York owner with the same appreciation faces meaningful additional state tax. A Dallas or Fort Worth owner does not.

The 20% Giving Multiplier

Contributing appreciated stock directly to charity, instead of selling and donating cash proceeds, can increase a donor's giving capacity by up to 20% by eliminating the capital gains tax otherwise owed (Fidelity Charitable). The mechanism is elimination, not deferral. Fidelity Charitable's 2026 Giving Report shows 67% of 2024 contributions came in as non-cash assets, and the Donor Advised Fund Research Collaborative's 2025 report identifies 3.56 million DAF accounts holding $326.45 billion in charitable assets, up 27.5% year over year.

AGI Limits, Carryforward, and OBBBA's 2026 Changes

Appreciated non-cash property gifted to a public charity or DAF is deductible up to 30% of AGI (IRC §170(b)(1)(C)). The same gift to a private foundation is limited to 20% of AGI. Excess deductions carry forward five years, so a gift completed by year-end 2026 can offset income through 2030. The One Big Beautiful Bill Act, effective January 1, 2026, added a 0.5% AGI floor on itemized charitable deductions and a 35% deduction cap for top-bracket donors (Greenberg Traurig). Our companion piece on Charitable Giving Tax Optimization covers those mechanics in depth. For pre-sale gifts at this scale, the dominant benefit remains capital gains elimination, not the deduction rate.

Choosing the Right Charitable Vehicle Before Your Sale

The right vehicle depends on three variables: business entity type, whether the owner needs retained income from the gifted portion, and how grants will be directed over time. The comparison below summarizes the trade-offs; the sections that follow explain each in depth.

Vehicle	Deduction Basis (Private Stock)	AGI Limit	Retained Income	S-Corp Compatible
Donor-Advised Fund	Fair market value	30%	No	Yes, with UBTI drag
Charitable Remainder Trust	Fair market value	30%	Yes (annuity or unitrust)	No
Private Foundation	Cost basis	20%	No	Yes, with UBTI drag

Donor-Advised Funds: The Default for Most Pre-Sale Gifts

A DAF is a public charity for tax purposes, so gifts of appreciated privately held stock to a DAF are deductible at fair market value up to the 30% AGI limit. A private foundation carries a different rule: gifts of closely held stock to a private foundation are deductible only at cost basis unless the stock qualifies as "qualified appreciated stock" (essentially, publicly traded). For most DFW owners contemplating a pre-sale gift of privately held company stock, that cost-basis limitation makes the private foundation route considerably less efficient. National sponsors including Fidelity Charitable, DAFgiving360, and the

National Philanthropic Trust routinely accept private company stock, though each has its own acceptance criteria. When the QSBS exclusion is unavailable, as we discussed in Why Your Practice Exit Won't Qualify for QSBS, a well-structured DAF gift is often the most tax-efficient alternative.

Charitable Remainder Trusts: When Retained Income Matters

A charitable remainder trust (an irrevocable trust that pays income to the donor for a set term, with the remainder passing to charity) suits owners who want a charitable outcome and an income stream from the gifted portion. Under IRC §664, a CRAT pays a fixed dollar amount each year; a CRUT pays a fixed percentage of the trust's annually revalued assets. Payout must fall between 5% and 50%, and the present value of the charity's remainder must equal at least 10% of initial fair market value. The trust is generally income-tax-exempt, but distributions to the beneficiary are taxed under a four-tier system. Capital gains are recognized gradually as distributed, not eliminated. A CRT defers and stretches the tax rather than eliminating it.

The S-Corporation Trap

Roughly 80% of non-publicly-traded U.S. companies are taxed as S corporations (The Signatry). For those owners, the standard playbook does not apply cleanly. Under IRC §512(e), all income a charity receives from S-corp stock, including gain on the eventual sale, is automatically classified as unrelated business taxable income and taxed at the corporate rate. The CRT path is closed entirely: a CRT is not a permissible S-corp shareholder, and transferring S-corp stock into one terminates the S election. S-corp owners generally need to work through a trust-form DAF or specialized single-purpose entity. This is not planning to attempt without tax counsel experienced in S-corp charitable structuring.

What the IRS Looks For: Qualified Appraisal Requirements

The tax deduction is only as strong as the documentation supporting it. For gifts of private company stock, that documentation begins with a qualified appraisal by a qualified appraiser.

The Qualified Appraiser Standard Under Treas. Reg. 1.170A-17

Under IRC §170(f)(11), any noncash charitable gift above $5,000 requires a qualified appraisal; closely held stock gifts above $10,000 require one specifically, and gifts exceeding $500,000 require the appraisal to be attached to the return. Treas. Reg. 1.170A-17 defines who qualifies: an individual with verifiable education and experience valuing the property, either through coursework plus at least two years of relevant experience or through a recognized appraiser designation. The appraisal must follow USPAP standards. The appraiser's fee cannot be based on a percentage of the appraised value, and the appraiser faces IRS penalties under §6695A for substantial misstatements. A common misconception is worth flagging: a company's existing 409A or ASC 718 valuation generally does not satisfy the qualified appraisal standard (Valuation Research Corp.). A fresh, independent appraisal disclosing methodology and any applicable discounts is what the IRS actually looks for.

Form 8283 and the Documentation Trail

Form 8283 substantiates noncash gifts on the tax return. Property valued at $5,000 or less goes in Section A. Everything else, including closely held stock over $5,000, goes in Section B, which requires both the appraiser's signature and the donee organization's acknowledgment. The donee's signature acknowledges receipt of the gift but does not represent agreement with the claimed value. Valuation defense belongs to the appraiser and, ultimately, to the donor.

The Ideal Pre-Sale Charitable Planning Timeline

Pre-sale charitable planning cannot be executed well on a rushed timeline. The three windows below describe how we typically pace the work with clients approaching a sale.

12–18 Months Out: Strategic Framing Alongside Exit Planning

At this range, the sale is a serious possibility but not yet a plan of record. This is the moment to frame charitable planning as one element of business succession planning and a broader tax strategy that spans estate planning, exit design, and philanthropic intent, rather than a bolt-on at closing. The DFW context is not incidental. Texas saw 195 announced M&A deals in Q3 2025 with $39.9 billion in disclosed value (S&P Global Market Intelligence via William & Wall). Middle-market Texas transactions rose 39.4% by count and 48.7% by value in the second half of 2024 (Baker Tilly). Nationally, McKinsey projects roughly six million U.S. small and mid-size businesses will face ownership transitions by 2035, with up to $5 trillion in enterprise value at stake, and the Exit Planning Institute finds 75% of owners want to exit within ten years. Our broader guide at Maximizing Business Exit Value covers the operational and valuation levers we work in parallel.

6–12 Months Out: Appraisal Engagement and Vehicle Setup

This is the operational window. A qualified appraiser needs to be engaged with enough lead time to produce a defensible report before serious due diligence. The DAF sponsor or CRT trustee needs to be selected and the private-stock acceptance process initiated. Stock certificates need to be located, entity approvals secured, and transfer restrictions reviewed. In practice, the appraisal alone often runs six to ten weeks, and DAF sponsors typically take four to twelve weeks to complete acceptance review for privately held stock. Two things going slightly wrong in sequence can consume the entire buffer.

The Point of No Return: Signals That the Window Has Closed

The window has effectively closed when the sale has become practically certain, whether or not a binding document exists. Common signals include:

- A signed purchase agreement
- Board resolutions authorizing the transaction
- Buyer financing commitments in place
- Satisfied material closing conditions
- Public announcement of the deal

Tax planning that begins after an LOI is signed usually forfeits access to gifting strategies, entity restructuring, installment sale benefits, and QSBS optimization (Titan). No single signal is a bright-line test. Together, they define the fact pattern the courts have used to tax donors on gifts made too late.

What Can Go Wrong: Risks Every DFW Owner Should Weigh

Pre-sale charitable planning is powerful, but it is not costless. Three risks deserve honest weighing before any transfer document is signed.

When the Deal Doesn't Close: Living With Irrevocability

A charitable gift is irrevocable. The same feature that makes the gift legally valid under Rev. Rul. 78-197, namely that the charity is not compelled to sell the stock back to the buyer, means the stock stays with the charity if the sale never closes. For most owners, the appropriate response is to gift a measured percentage of the shares rather than the entire position. A partial gift preserves optionality while still capturing meaningful capital gains elimination on the gifted portion.

The True Cost of a Charitable Remainder Trust

CRT setup and administration are not cheap. Legal drafting commonly runs $10,000 to $25,000 in a business-sale context (Valur). Annual trustee, administration, and investment costs typically fall between 0.5% and 1.5% of assets, with corporate trustee minimums that can distort the economics of smaller trusts. The Greater Houston Community Foundation places the meaningful funding threshold at approximately $250,000. Pre-sale CRT candidates at our clients' asset scale are usually funding well above that level, but the cost structure remains worth understanding.

Over-Gifting and the Family-Wealth Balance

> "A dollar gifted to charity is a dollar that does not pass to heirs"

A dollar gifted to charity is a dollar that does not pass to heirs. Owners with strong charitable intent sometimes over-weight the philanthropic side of the balance sheet in the year of a sale, only to reconsider two or three years later as their post-sale financial picture matures. The correct counterweight is disciplined coordination between charitable planning, estate planning, and family-wealth-transfer strategy. This is particularly true for family businesses, where succession considerations may complicate liquidity assumptions and where estate planning and charitable planning need to move on parallel tracks. OBBBA's permanently elevated estate and gift tax exemption keeps large intergenerational transfers on the table for Texas families. Our article on the [Spousal Lifetime Access Trust Texas: The $30M OBBBA Opportunity] covers how we integrate SLAT and other trust structures with charitable planning. These strategies are complements, not alternatives.

Frequently Asked Questions

Can I still donate stock to charity after signing an LOI?

Sometimes, but not reliably. A non-binding LOI is not automatically fatal under Rev. Rul. 78-197 because the charity is not legally compelled to complete the sale. However, Ferguson established that once a transaction becomes "practically certain to occur," the gain is taxed to the donor regardless of who holds the stock at closing. In most fact patterns, the safer course is to gift shares before the LOI is signed. If the LOI is already signed, careful factual analysis with your legal and tax advisors is essential before proceeding.

What does "practically certain" mean for charitable stock gifts?

"Practically certain" is a fact-based test the courts apply to decide whether a business sale has ripened enough that the tax on the gain belongs to the current owner, even before the sale technically closes. Articulated in Ferguson and reaffirmed in Hoensheid, the test looks at completed due diligence, board approvals, buyer financing commitments, satisfied closing conditions, and public announcements. No single factor is dispositive. When enough signals are present, a subsequent charitable gift will not shift the tax on the gain even if Rev. Rul. 78-197's technical safe harbor is satisfied.

Does a 409A valuation count as a qualified appraisal for the IRS?

Generally no. A 409A valuation is prepared for setting stock-option strike prices and is not designed to meet the qualified appraisal standard for charitable deductions. Treas. Reg. 1.170A-17 requires a qualified appraiser with specific credentials, an appraisal following USPAP standards, and disclosure of methodology and applicable discounts. Using a 409A or ASC 718 valuation to support a charitable deduction generally leaves the deduction exposed to IRS challenge, according to Valuation Research Corp. A fresh, independent qualified appraisal is the appropriate documentation.

How much appreciated stock can I deduct in a single tax year?

Appreciated long-term capital gain property gifted to a public charity or DAF is deductible up to 30% of AGI (IRC §170(b)(1)(C)). The same gift to a private foundation is limited to 20% of AGI. Any excess carries forward for up to five years, so a gift completed by year-end 2026 can offset income through 2030. OBBBA's 2026 changes add a 0.5% AGI floor and a 35% deduction cap for taxpayers in the 37% bracket (Greenberg Traurig), both of which should be modeled with your tax advisor.

Can I donate S-corporation stock to a charitable remainder trust?

No. A CRT is not a permissible S-corporation shareholder under IRC §512(e) and Subchapter S rules. Transferring S-corp stock to a CRT terminates the S election and converts the entity to a C corporation for tax purposes, which is rarely the intended outcome. S-corp owners who want to pursue pre-sale charitable planning generally need to use a public-charity DAF structured as a trust, which can absorb the unrelated business taxable income more efficiently. This requires tax counsel with specific experience in S-corp charitable structuring.

About Palmer Wealth Group™

Palmer Wealth Group™ is a boutique wealth management practice operating as an Integrated Wealth Alliance — a coordinated team of specialists dedicated to business owners, corporate executives, professional practice owners, and multi-generational families navigating the financial complexities that accompany significant wealth. Led by Luke A. Palmer, CFP®, AAMS®, CRPS®, AWMA®, the practice delivers the institutional-quality strategies and coordinated oversight that clients who have outgrown conventional advisory models require. Learn more at palmerwealthgroup.com.

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IRC §170(b)(1)(D) — 20% AGI limitation for appreciated property gifted to private foundations.
IRC §170(f)(11) — Qualified appraisal requirements for noncash charitable contributions.
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IRS Materials

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Rev. Proc. 2025-32 — 2026 inflation adjustments to tax thresholds, including long-term capital gains brackets.
IRS Form 8283 (Noncash Charitable Contributions) and Instructions.

Federal Legislation

One Big Beautiful Bill Act, effective January 1, 2026 — Modifications to charitable deduction rules, including the new 0.5% AGI floor and the 35% deduction cap for taxpayers in the 37% bracket.

Research Methodology: *This article was prepared with the assistance of AI tools that supported research synthesis and initial drafting. AI tools do not exercise professional judgment and may have gaps in current regulatory or market information. All content was independently reviewed by qualified Palmer Wealth Group™ professionals. The analysis and guidance expressed here represent the professional judgment of Palmer Wealth Group™, not AI outputs. Palmer Wealth Group™ assumes full editorial and compliance responsibility for this content.*